

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-210756.2 **DATE:** April 24, 1984
MATTER OF: York Industries, Inc.
DIGEST:

1. GAO will not question the contracting officer's use of carrier shipping rates provided by government transportation experts for purposes of evaluating transportation costs associated with a supply contract, unless it is shown that the contracting officer acted in bad faith.
2. In judging proposals, a contracting agency may not consider evaluation factors which were not included in the solicitation's evaluation criteria.
3. An erroneous transcription of an offeror's prices in the abstract of proposals provides no basis to challenge an award.
4. Post-award protest that the agency should have included certain clauses regarding the evaluation of transportation costs in the solicitation is untimely since alleged improprieties apparent prior to the closing date for submission of proposals must be filed before that date.

York Industries, Inc. protests the Air Force's award of a requirements contract to Hydraulics International, Inc. under request for proposals No. F41608-82-R-1328 to design and supply certain aircraft hydraulic test stands.

We deny the protest in part and dismiss it in part.

The solicitation contemplated the award of a multi-year fixed price contract based on the lowest evaluated total price. Since the solicitation provided for delivery

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f.o.b. origin, the lowest evaluated price was to include the evaluation of estimated transportation costs to be borne by the government. While York offered the lowest total price for the required items, \$6,392,325, as compared to Hydraulic International's price of \$6,406,577, the addition of the Air Force's estimated transportation costs resulted in Hydraulics International's evaluated total price being lower than the protester's by almost \$1,860.

I. Issues

The protester basically contends that: A) the Air Force's evaluation of transportation costs was in error; B) the Air Force improperly failed to evaluate the awardee's price for packing items to be shipped overseas; C) the awardee's offer did not comply with material terms of the solicitation, and D) the solicitation failed to include certain mandatory clauses regarding the evaluation of transportation costs.

II. Discussion and Analysis

A. Transportation Costs

After several rounds of the protester's objecting to the Air Force's computation of transportation costs and the Air Force subsequently recalculating the costs, the Air Force finally fixed the transportation costs of the protester's offer at \$51,937.82 and of the awardee's offer at \$35,826.09. The only variables accounting for the difference in those costs were the mileage from each offeror's place of shipment to Kelly Air Force Base, Texas, and the lowest available transportation rates between those points. (The same trailers were available to each offeror, and the Air Force assumed the same weight and dimension for each offeror's test stands since the stands had not been designed yet.)

Based on information obtained from the contracting activity's transportation office, the Air Force determined that the applicable mileage and rates were as follows:

	<u>York</u>	<u>Hydraulic International</u>
<u>Mileage</u>	1618 (from Manchester, Pa.)	1342 (from Canoga Park, Ca.)
<u>Rate</u>	93¢/mi.	77¢/mi.

The protester disputes the Air Force's determinations of both variables. First, the protester contends that the mileage should be 1617 for itself and 1367 for Hydraulics International (based on a Household Carriers Mileage Guide edition issued after the closing date for proposals--the Air Force used the latest edition prior to that date). We need not consider this matter, however, since the mileage discrepancy is not enough to affect the relative standing of York and Hydraulics International.

Second, the protester argues that the 77 cent rate for Hydraulics International in fact was not appropriate because the rate was based on the services of a carrier that allegedly was financially unable to furnish them. The applicable rate for the evaluation of Hydraulics International's transportation costs therefore is the critical issue here.

The contracting officer determined the rates to apply to the two offers by questioning his transportation office personnel, who in turn requested the lowest applicable rates from the Military Traffic Management Command (MTMC) as required by Defense Acquisition Regulation (DAR) § 19-301.1(a) (1976 ed.). That command actually determined the applicable rates.

Our Office has held that contracting officers, acting in good faith, have a right to rely on the information provided by transportation-rate specialists. Applied Optic Kinetics, Ltd., B-212332, February 7, 1984, 84-1 CPD 150; Wilson & Hayes, Inc., B-206286, February 28, 1983, 83-1 CPD 191. Nothing in the record indicates that the contracting officer acted in other than good faith in his attempts to ascertain the applicable rates. He requested that the transportation office advise him of the applicable rates, and he repeatedly forwarded the protester's objections to the transportation office which then requested and received the necessary input from MTMC.

Moreover, it appears that MTMC provided the correct lowest available rate for the evaluation of Hydraulics International's offer. We contacted MTMC and were advised that while the carrier did go out of business and cease providing transportation services several months after the closing date for the receipt of proposals and after the date of award, the carrier was still providing such services when the Air Force evaluated transportation costs and for some period after the award. During this time, the carrier was eligible for government shipments; although

subsequent to the award the carrier was placed on probation, this action still did not make the carrier ineligible for government shipments. Thus, the contracting officer in fact used a viable rate when computing the transportation costs applicable to Hydraulics International's offer.

The protest on this issue is denied.

B. Failure to Evaluate Packing Price

The solicitation contained a clause that included the following:

". . . Offeror may set forth in the space provided below an amount which represents the unit price differential between preparation for domestic shipments and preparation for overseas shipments which shall be added to the unit prices set forth for Item(s) above when ordered.

"If the offeror fails to set forth an amount below, the government shall assume there are no additional charges."

Hydraulics International's offer included an amount of \$930 in the space provided, while York left the space blank. The abstract of proposals prepared by the contracting officer contains an estimated cost of Hydraulic International's offer that includes \$2,790 for such packing (thus indicating that the Air Force anticipated shipping three units overseas).

The protester contends that this amount should have been included in the evaluation of the awardee's total price, and points out that the addition of this amount to Hydraulics International's evaluated total price would have resulted in York being the lowest-priced offeror. The Air Force responds that it did not evaluate the packing price because the price was not listed as an evaluation factor in the solicitation's "EVALUATION FACTORS FOR AWARD" section, which provided a precise formula for determining the lowest evaluated total price. In fact, prior to the submission of proposals, the Air Force amended the solicitation to exclude a provision that expressly provided for the evaluation of packing prices; the provision stated that the lowest evaluated total price would include "the unit price differentials offered . . . multiplied by the estimated quantity that may be ordered that may require Level A Packing [for overseas shipments]."

It is a fundamental principle of federal procurement law that while procuring agencies have broad discretion in determining the evaluation plan they will use, they do not have the discretion to announce in the solicitation that one plan will be used and then follow another in the actual evaluation. Once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria or inform all offerors of any significant changes and give them an opportunity to revise their offers. Vibra-Tech Engineers Incorporated, B-209541.2, May 23, 1983, 83-1 CPD 550. Since the solicitation's evaluation factors did not include the packing price as an evaluation factor, the Air Force properly did not include that price in its evaluation of the awardee's total price for the purpose of selecting the contractor. See Wild Heerbrugg Instruments, Inc., B-210092, September 2, 1983, 83-2 CPD 295 (concerning the agency's failure to evaluate life-cycle costs).

To the extent that the protester contends that the Air Force should have included packing prices in the solicitation's listed evaluation factors, the protest is untimely. See Wild Heerbrugg Instruments, Inc., supra. The contention involves an alleged apparent solicitation impropriety which, under our Bid Protest Procedures, had to be protested either here or with the contracting agency prior to the closing date for the receipt of proposals. 4 C.F.R. § 21.2(b)(1) (1983). Since York did not file its initial protest until after the award, the protest on this issue clearly is untimely.

We therefore deny this aspect of the protest in part and dismiss it in part.

We are concerned, however, as to why the Air Force chose not to evaluate the packing cost, since the basis for award was price, under the solicitation overseas packing could be a separately-priced item, and it is apparent that the agency anticipated shipping three units overseas. We are recommending that the Air Force, in future solicitations of this sort, consider including this item as an evaluation factor where the government will be bearing the cost of overseas packing.

C. Awardee's Compliance with the Solicitation

The protester points out that the contracting officer's abstract of proposals furnished to York lists \$33,549 as Hydraulics International's offered price for

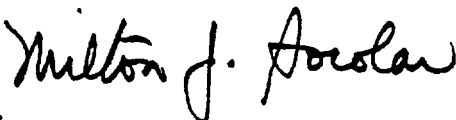
each additional test stand unit above the best estimated quantity (BEQ) contained in the solicitation, and lists \$32,539 for each unit within the BEQ. The solicitation, however, explicitly stipulated that the former price could not be more than the price for the BEQ. The protester therefore contends that Hydraulic's offer was unacceptable.

The simple answer to this aspect of the protest is that the abstract of proposals contains a transcription error, since the awardee's best and final offer, timely received by the contracting officer, lists a price of \$32,439 for each unit above the BEQ, which price is lower than the unit price for the BEQ. Since there is no other affirmative evidence that the awardee's best and final offer did not comply with material terms of the solicitation, we deny this aspect of the protest. See George C. Martin, Inc., 55 Comp. Gen. 100 (1975), 75-2 CPD 55.

D. Solicitation's Failure to Include Mandatory
Clauses

The protester contends that the Air Force omitted from the solicitation certain clauses pertaining to the evaluation of transportation costs that the DAR required to be included. Like the complaint that the solicitation did not include packing prices as an evaluation factor, this issue involves an alleged impropriety apparent from the solicitation that the protester failed to protest in a timely manner, that is, prior to the closing date for the receipt of proposals. 4 C.F.R. § 21.2(b)(1). We therefore dismiss this protest ground.

The protest is denied in part and dismissed in part.


Acting Comptroller General
of the United States